COURT NO.2.

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 1089 of 2001

State of Uttaranchal through
Collector, Tehri Garhwal **Appellant.**

Versus

Paipurna Nand & others **Respondents**

Sri Bhupender Singh, Learned Standing Counsel for the appellant.
Sri V.K. Kohli, Sr. Advocate, learned counsel for the respondents.

Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

Heard. Admit the appeal.

This appeal arises out of the judgment and decree dated 18-09-2001, passed by the Additional District Judge, Tehri Garhwal ***(in short the Judge)*** in Land Acquisition Case No. 2 of 1996, Paripurna Nand and others Vs. State of Uttaranchal, whereby the learned Judge has allowed the reference and has awarded compensation of Rs. 3,20,053/- as enhanced compensation in favour of the claimant-respondents with certain direction to the appellant as mentioned in the impugned order.

Brief facts, giving rise to the present appeal, are that the Special Land Acquisition Officer (Irrigation) Tehri Garhwal made an award in respect of the land acquired by the Government belonging to the claimant-respondents measuring 2345 Sq.ft. of Khata No. 12 with buildings standing thereon and of Khata No. 13, measuring 4152 Sq.ft. with buildings standing thereon. The Special Land acquisition Officer Tehri Garhwal has awarded total compensation of Rs. 4,97,610.55 in favour of the petitioners (respondents) on different counts as mentioned Nainital the Award. Objections were filed by the petitioners before the Special Land Acquisition Officer concerned. Ultimately, matter was referred under Section 18 of the Land Acquisition Act to the District Judge

for determination of compensation amount. The matter was registered as Land Acquisition Reference No. 2 of 1996, Sri Paripurnand and 3 others vs. state of Uttaranchal. The learned Judge framed the following Issues in the case:

1. ***Whether the compensation, solatium and interest etc. awarded to the claimants are inadequate? If so, its effect?***
2. ***any other relief?***

The learned Judge after taking into account all the aspect of the case, came to the conclusion that the petitioners are entitled to the compensation in respect of land, buildings, trees of Khata No. 12 to the tune of Rs. 70,350/- for land, Rs. 1,40,987/- for buildings and Rs. 200/- for trees, total Rs. 2,11,527. In respect of Khata No. 13, the learned Judge has held that the claimants are entitled to get compensation of Rs. 1,24,560/- for land, Rs. 1,52,128/- for buildings and Rs. 300/- for trees with a total of Rs. 2,76,988/-. In addition to its, Rs. 6000/- each for change of resident of Khata No. 12 and Khata No. 13 has been determined for the aforementioned properties of Khata Nos. 12 and 13. In addition to it, additional amounts towards solatium, etc. have been awarded by the learned Judge. Aggrieved by the judgment and award passed by the learned Additional District Judge, the State of Uttaranchal-appellant has come up in appeal.

It has been submitted on behalf of the appellant that the court below has erred in allowing the reference and awarding enhanced amounts of compensation in favour of the claimants. It has been vehemently argued that the learned court below has committed illegality Nainital enhancing the rate of acquired land from Rs.5.41 per sq.ft to Rs. 30/-, which is awarded by the court below in the Reference No 1 of 1990 Inder Singh and others vs. State of U.P. in respect of the land of Ward No.1, against which appeal is still pending. In the course of arguments, the learned Standing Counsel

has hammered amount of compensation awarded by the learned Additional District Judge for the market value of the land acquired in this case and it has been submitted that the matter of market value of the land alone be examined in the present appeal.

We have carefully gone through the entire material on record including the impugned judgment and award. In our opinion, the learned Additional District Judge has rightly assessed the compensation in respect of buildings, trees, etc. So far as the market value of the land acquired is concerned, the submission of the learned Standing Counsel bears force. The learned Additional District Judge on Issue No.1 has observed that "***The Land Acquisition Officer has considered the sale-deeds(Exemplars) made in the month of August 1982 and November 1982. In these 6 sale-deeds mentioned in the award the land was sold at the rate ranging from Rs. 5.41 to Rs. 15.19 per Sq.Ft, but he has relied of 5.41 Sq.Ft. … …. The petitioner (***respondents***) have also not filed any sale-deed which could be considered for the purpose. However, they have filed copy of judgment in L.A.R. No. 1/1990 Inder Singh and others vs. State of U.P. regarding land of Ward No.1 in which the petitioner was awarded compensation at Rs.50/- per Sq.Ft. as the land lay in an ared having high commercial potential and prospects."*** The learned Reference Court has relied upon the enhanced rate of compensation from Rs. 6/- to Rs. 30 per Sq.Ft. awarded by the District Judge Tehri Garhwal to Sri Lakhi Ram Semalty in respect of land of Ward No. 2, thereby the Reference Court has enhanced the market value of the land in the present case. The land in the present case belongs to Ward No.4. The learned Reference Court has not given reasons to accept the above rate of Rs. 30/- per Sq.Ft. There is no convincing finding recorded by the Reference Court for accepting the case of Lakhi Ram Semalty. Without any analogy or similarity Nainital respect of the land of Ward No.2 as well as the land of Ward No.4, we are unable to uphold the finding of the Reference Court that the claimant-

respondent are entitled to get market price of the land acquired in the present case at the rate of rs.30/- per Sq.Ft. On this score alone, the finding of the Reference Court so far as it relates to price of the land at the rate of Rs.30/- per Sq.Ft. is not tenable. However, rest of the findings recorded by the Reference Court need not require any interference by this Court.

No other point was urged or argued before us in this appeal.

In the result, the appeal is partly allowed. The impugned judgment and decree dated 18-09-2001 is set aside, ***so far as it relates to market price of the land acquired.*** Rest of the findings of the Reference Court shall remain undisturbed. The learned Reference Court is directed to reconsider the matter in the light of the observations made above. No order as to costs.

The amount, if any, deposited with this Court shall be remitted to the Reference Court.

27-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP